VIRGINIA SECTION

CAN THE COMMONWEALTH OBTAIN CHANGE OF VENUE IN CRIMINAL CASES WITHOUT THE CONSENT OF THE ACCUSED?—§ 4914 of the Virginia Code of 1919 provides:

> "A circuit court may, on motion of the accused or of the Commonwealth, for good cause, order the venue for the trial of a criminal case in such court to be changed to some other circuit or corporation court, and in like manner the court of a corporation may order the venue to be changed to some other circuit or corporation court."

In view of the language of Article I, § 8 of the Virginia State Constitution, guaranteeing to a person accused of crime "a speedy trial by an impartial jury of his vicinage", we think § 4914 unconstitutional in so far as it permits a change of venue on the motion of the Commonwealth and against the objection of the accused.

As this section stood before the last revision of the Code, it permitted a circuit or corporation court to order a change of venue on motion of the accused or of the Commonwealth without the necessity for showing cause, or for good cause the court could order a change of venue of its own volition without any motion whatever. The words in the revised section "for good cause" were also made applicable by the revisors to a change of venue made on motion, and in the revisors' note it is admitted that as the section formerly stood it was clearly unconstitutional, at least in so far as it permitted the Commonwealth to have a change of venue on motion without showing cause.

We fail to see how the addition affects the constitutionality of the statute in any manner. The language of the Constitution appears clear, concise and capable of but one construction. The only controversy that can arise is the question of the area intended to be covered by the use of the word "vicinage".

Mr. Black, in his Law Dictionary, has defined this word as "neighborhood; section near dwelling; vicinity. In modern usage it means the county where a trial is had, a crime committed, etc.," while in many modern cases it has been defined as "the county in which the crime was committed".[1]

There seem to have been no decision covering the point in Virginia, but since the present Constitution was adopted in 1902, it must clearly have been drawn under the modern conception of the definition. The Tennessee Constitution contains a provision that the ac-

[1] State *v.* Crinklaw, 40 Neb. 759, 59 N. W. 370; Convers *v.* R. Co., 18 Mich. 459; Taylor *v.* Gardiner, 11 R. I. 182; *Ex parte* McNeeley, 36 W. Va. 84, 14 S. E. 436, 15 L. R. A. 226, 32 Am. St. Rep. 831.

cused shall be tried in the county or district in which the crime was committed. In a leading case in that State, the defendants had been indicted in Munro County for murder, and on the order of the court the venue was changed in the county of Blount. The defendants were there convicted, motion for a new trial being refused. The defendants then moved in arrest of judgment, which motion was sustained and judgment on the verdict arrested. On appeal, the Supreme Court of Appeals of Tennessee sustained the Circuit Court of Blount County in refusing judgment on the verdict. Judge Hall, in his opinion, said, "The right of the accused to be tried in the county in which the offense is alleged to have been committed is a right secured to him by the Constitution of the State, and of which he cannot, in any case, be deprived without his consent given in open court." [2]

The scope of this note does not permit dealing with the subject at length, but in general it may be said that while no case has been found construing the word "vicinage" in such a provision, the decisions throughout the country are unanimously to the effect that in those States whose Constitutions secure to accused persons the right to be tried in the "county or district" where the crime was committed a change of venue can be made only with the consent of the accused.[3]

We therefore submit that Article I, § 8 was drawn under the modern conception of the definition of the word "vicinage", that it was the intent of the drawers to secure to accused persons the privilege of trial in the county wherein the offense had been committed, and that part of § 4914 of the Virginia Code of 1919 permitting a change of venue on motion of the Commonwealth, and against the objection of the accused, is unconstitutional and void.

W. R. A.

DEATH BY WRONGFUL ACT—RIGHT OF ADMINISTRATOR OF WIFE TO SUE HUSBAND.—The Virginia Statute of Death by Wrongful Act, while seemingly broad and comprehensive in its scope, is yet deficient in one important, though rather unique respect; it is so worded that where the death of one consort is caused by the wrongful act of the other, no action can be maintained against the guilty party by the personal representative of the deceased.

The Virginia Code of 1919, § 5786, reads in part as follows: "Whenever the death of a person shall be caused by the wrongful act, neglect or default of any person or corporation * * * and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action,

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[2] State *v.* Denton, 6 Cold. (Tenn.) 539.

[3] Dougan *v.* State, 30 Ark. 41; State *v.* Knapp, 40 Kan. 148, 19 Pac. 728; Wheeler *v.* State, 24 Wis. 52; *Ex parte* Rivers, 40 Ala. 712; CLARK, CRIMINAL PROCEDURE, p. 486.